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TOWN ATTORNEY REPORT

DATE: April 11, 2002  
FROM: Monroe D. Kiar  
RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee met on September 12, 2001 and ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services. The Administration advises that its negotiations as to the terms of an agreement with URS are ongoing and that there are still some terms to be worked out. The Town Attorney's Office confirmed with the Administration on April 11, 2002, that its negotiations as to the terms of an agreement with URS are still ongoing and that there is still some terms to be worked out.
2. **Ordonez, et al v. Town of Davie:** As indicated in earlier reports to the Town Council, this matter went to trial and the jury returned a zero verdict for the Plaintiffs. Mr. Burke filed a Motion to Tax Costs and Attorney's Fees against the Plaintiffs and the Court entered a Judgment in favor of the Town of Davie against the Plaintiffs in the amount of \$6,514.34. Since the Florida League of Cities advanced all costs and attorney's fees in this matter, it will seek to recover upon the Judgment from the Plaintiffs directly. From my discussions with Mr. Burke on this date (April 11, 2002), it appears that it is his continued belief that the Florida League of Cities will not be seeking reimbursement from the Town for the \$6,514.34 in costs and attorney's fees which it expended in this matter, but will be seeking to recover them from the Plaintiffs (Ordonez).
3. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A Final Order and Judgment Granting Petition for Common Law Certiorari was entered by Judge Patricia Cocalis in these two consolidated cases. A copy of the Final Order and Judgment Granting Petition for Common Law Certiorari were forwarded to the Town Council by the Town Attorney's Office along with a letter addressed to the Town Attorney which is a document exempt from public record disclosure pursuant to Florida Statutes §119.07(3)(1), until the conclusion of the referenced litigation. Said document set forth the comments of the Town's outside legal

counsel, Michael T. Burke, who was assigned to this litigation by the Florida League of Cities. On April 9, 2002, a Special Executive Session was held by the Davie Town Council with Mr. Burke and the Town Attorney, and the Town Council gave its direction to Mr. Burke as to how it wishes to proceed in this litigation.

4. **MVP Properties, Inc.:** The United States District Judge granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the Town and against the Plaintiff, MVP Properties, Inc. MVP Properties, Inc. filed a Notice of Appeal and both sides have filed their Appellate Briefs. Mediation was ordered by the 11<sup>th</sup> Circuit Court of Appeals which was held on November 1, 2001, but a settlement of this dispute was not reached. Mr. Burke offered to waive the outstanding Cost Judgment if the Plaintiff Corporation would agree to withdraw its appeal. MVP Properties, Inc. rejected this proposal and it was unwilling to make a counter-proposal unless the Town of Davie expressed a willingness to pay the Plaintiff Corporation some amount of money. The mediation ended with an impasse. Oral argument on the Appeal filed by MVP Properties, Inc. was heard on February 1, 2002, at the Federal Courthouse in Miami, Florida. The 11<sup>th</sup> Circuit Court of Appeals affirmed the decision of the lower court in favor of the Town of Davie and against the Plaintiff, MVP Properties, Inc. Mr. Burke further advises that a Judgment for Costs has been obtained against MVP Properties, Inc. and he has written to the attorney for MVP Properties, Inc. requesting that same be paid forthwith.
5. **Town of Davie v. Malka:** The Town Attorney's Office has spoken with the Building Official who has again confirmed that the exterior of the home is complete and that Mr. Malka is continuing the completion of the interior which will consist of a living room addition. Mr. Malka is in the process of completing the underground wiring and the mechanical aspects of the improvement and thereafter, will install the installation and drywall. The Building Department continues to keep close contact with this property owner to insure proper completion of all additions to the structure as promised by the property owner.
6. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** Recently, a Bill was filed with the State Legislature by supporters of the Department of Agriculture and signed into law by the Governor extending the powers of the Florida Department of Agriculture and Consumer Services relevant to the Citrus Canker matter. The Bill allows the Department far greater and far reaching powers than had previously existed. The Department of Agriculture has indicated that it will resume cutting all exposed trees within the 1900 foot radius of an infected tree immediately. At the last Town Council Meeting, representatives from the Department of Agriculture and supporters of the coalition of cities appeared before the Town Council. The Town Council voted 4-1 to join with Broward County in filing a lawsuit to enjoin the Department of Agriculture from initiating the cutting of the uninfected, but exposed trees. A copy of the Complaint filed by the County and coalition of cities, including the Town of Davie, has been previously forwarded to the members of the Town Council by the Town Attorney's Office. The coalition of cities is seeking a stay to prevent the cutting of exposed, but uninfected trees which is now permitted under the recently passed Bill. Judge Fleet has scheduled a hearing on the coalition of cities' Motion for a Temporary Injunction to enjoin the Florida Department of Agriculture and Consumer Services from cutting trees within the 1900 foot radius of an infected tree as well as enjoining the Department from issuing any new IFO's. The hearing is scheduled for Friday, April 12, 2002, at 1:30 P.M.

7. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie has filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed the case from the trial docket pending its ruling on our Motion for Summary Judgment. The Town Attorney's Office has been in contact with the outside attorney assigned by the Florida League of Cities in this case, and was advised today that he will shortly be filing a Motion to Dismiss the lawsuit for lack of prosecution, as the Plaintiff had failed to take any action in this matter for many months. Mr. McDuff advises that the Plaintiff has filed a paper in these proceedings, but he is researching the law to see whether this is sufficient to defeat a Motion to Dismiss the lawsuit for lack of prosecution once the Motion has been filed.
8. **Reinfeld v. Town of Davie, et al:** The parties are currently conducting considerable discovery. The deposition of the Plaintiff was taken and based upon the contents of that deposition, Mr. Burke has filed a Motion seeking the entry of a Summary Judgment in favor of the Town and against the Plaintiff, Reinfeld. Mr. Marrero, the Florida League of Cities Attorney assigned to represent former Vice Mayor Weiner, has also filed a Motion for Summary Judgment on behalf of his client. Both attorneys have indicated to the Town Attorney that they are confident that their Motions will be granted by the Court. Both Motions are now pending, but not yet scheduled for hearing. A mediation session was held on March 7, 2002, but an impasse was reached. Mr. Burke has indicated that the Plaintiff has not yet responded to the Motion for Summary Judgment filed on behalf of the Town and the Motion for Summary Judgment filed on behalf of Defendant Weiner. Although a trial in this matter is now scheduled for May, 2002, it is believed that the trial will be postponed until after the Court has had an opportunity to rule on both Motions for Summary Judgment.
9. **Spur Road Property:** Mr. Burke, our outside legal counsel, gave a presentation to the Town Council 3 meetings ago, and advised the Council that the Division of Administrative Hearings had ruled against the Town of Davie's protest to the Department of Transportation's award of the property to the highest bidder, and that a Final Order had been entered by the Department of Transportation adopting the recommendations of the Judge for the Division of Administrative Hearings. Mr. Burke requested that the Council provide him with direction as to how to proceed in this matter and the Council authorized him to take an appeal of the Final Order that was entered against the Town. Mr. Burke advised the Town Attorney's Office this date, April 11, 2002, that his office had in fact filed a Notice of Appeal and his office is presently preparing their Appellate Brief.
10. **Victoria Saldena v. Town of Davie:** Ms. Saldena is suing the Town of Davie and another defendant relevant to an automobile accident. Mr. Johnson, the attorney assigned to represent the Town by the League of Cities, has assured the Town Attorney's Office that there should be no exposure to the Town which would exceed its insurance coverage and that the maximum exposure to the Town is its deductible. The Court recently issued an Order setting this matter for jury trial during the 5 week jury trial calendar commencing Tuesday, September 3, 2002. The Judge assigned to this case is Judge Charles M. Greene, a well respected Judge of the 17<sup>th</sup> Judicial Circuit of Broward County. Recently, depositions were taken of the treating physician as well as the doctor hired by the Plaintiff's PIP carrier, to conduct an independent medical examination of the Plaintiff. Our outside legal counsel was pleased with the depositions and

pleased with the testimony presented by the Board Certified Orthopaedic Surgeon, Dr. Stein, who conducted the independent medical examination for the PIP carrier, which was eventually utilized to terminate the Plaintiff's PIP benefits. The Town Attorney's Office has been advised that further discovery and depositions are being conducted at this time in this lawsuit.

11. **Cummings v. Town of Davie:** A Stipulated Final Judgment was submitted to the Court and signed by Judge Streitfeld in this matter on January 17, 2002. Pursuant to the terms of the Stipulated Final Judgment, the Town received from the Cummings a Quit Claim Deed transferring ownership of the disputed sidewalk property to the Town of Davie. The Town Council at its first Council Meeting held in March, 2002, accepted the Quit Claim Deed. The Town is in the process of recording the Deed and once it is returned to the Town, a copy will be transmitted to the attorney for Mr. and Mrs. Cummings pursuant to the Agreement and the Town Attorney's Office will close its file on this case.
12. **Proposed Sidewalk in Front of Foster Home:** As indicated previously in earlier Litigation Reports, after considerable negotiations, the parties were able to resolve their differences and the Fosters agreed to donate a permanent easement to the Town of Davie for the purposes of constructing the last segment of the sidewalk. The Town will pay all costs related to the conveyance of the permanent easement, including, but not limited to, the preparation of the conveyance documents and the fees charged by the Fosters' engineering expert, Mr. Arnold Ramos, as well as the costs of the legal descriptions of the areas to be conveyed to the Town which shall be prepared by McLaughlin Engineering, and the attorney's fees incurred by the Fosters relevant to this matter. As indicated, this office was advised by the attorney for the Fosters that the total costs to the Town are within the direct authority of the Administrator. The Town Attorney has visited the subject site on several occasions at no cost to the Town, to view the sidewalk completion work as it has progressed. It appears that the sidewalk itself is complete and the final work to insure proper drainage on to the Fosters' property is being completed. The Town Attorney's Office is extremely appreciative of the support it received from Mr. Bruce Bernard in its negotiations with the Fosters and their attorney which resulted in an amicable resolution of this matter with the property owner and thus, prevented a lawsuit similar to the Cummings v. Town of Davie case which was initiated under a prior Administration and prior Town Attorney.